IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9744 of 1998

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GSRTC - Petitioner(s)

Versus

AHMEDHUSAIN MAJIDKHAN KHANJADA - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner No(s).: 1.

MR JS BRAHMBHATT for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 19/07/2005

ORAL JUDGMENT

1.0 The petitioner Corporation has challenged the order dated 31.03.1998 passed by the Labour Court, Vadodara, in

Reference No.830 of 1995, whereby the petitioner was directed to reinstate the respondent with 50 per cent back wages.

2.0 The brief facts of the case are that the respondent was working as a Driver with the petitioner. It is the case of the petitioner that since the respondent remained absent during the period from 09.02.1994 to 15.02.1994, he was given charge-sheet and departmental inquiry was held against him. Since the charges leveled against him were proved, he was dismissed from service w.e.f. 16.07.1994.

2.1 Being aggrieved by the order of dismissal, the petitioner raised a dispute, which culminated into a reference being Reference No.830 of 1995. The Labour Court, by impugned award, allowed the reference as aforesaid. Hence, this petition.

3.0 On 20.11.1998 it was stated before this Court by the learned advocate that the respondent workman has been reinstated in service on 13.11.1998. Therefore, the question which is now required to be considered by this Court is with regard to grant of 50 per cent back wages

which was stayed by this Court vide order dated 20.11.1998.

4.0 Mr. H C Raval learned advocate for the petitioner has contended that the Labour Court while exercising powers u/s.11(A) of the Industrial Disputes Act, 1947, has not imposed any penalty while substituting the order of dismissal and on the contrary has awarded 50 per cent back wages, which, otherwise, the respondent was not entitled to receive. He has submitted that the Labour Court ought to have imposed some penalty on the respondent.

4.1 Mr. Raval has relied upon a decision of the Apex Court in the case of Delhi Transport Corporation v. Sardar Singh reported in (2004) 7 S.C.C. pg.574, wherein it has been held that habitual or continuous absence from duty, without sanctioned leave for long, prima facie amounted to habitual negligence of duties and lack of interest in work which may constitute a misconduct. He has, therefore, submitted that the Labour Court has committed grave error in awarding 50 per cent back wages to the respondent.

5.0 I have heard learned counsel for the parties and perused the documents placed on record. Since the respondent has been reinstated in service on 13.11.1998, it would not be proper to disturb the same at this stage. Hence, the order of reinstatement is required to be confirmed.

5.1 However, so far as the contention of Mr. Raval as regards granting 50 per cent back wages is concerned, the same is required to be accepted, inasmuch as the Labour Court has not given any cogent reasons / grounds as to on what basis it has awarded the same. Moreover, the past record of the respondent is also not good since he was guilty of misconduct on seven earlier occasions. Hence, the impugned order of the Labour Court qua awarding 50 per cent back wages is required to be quashed and set aside and some penalty is required to be imposed on the respondent.

6.0 In the result, the petition is partly allowed. The impugned award of the Labour Court qua granting reinstatement with continuity in service is confirmed; and, the direction qua awarding 50 per cent back wages is quashed and set aside. However, a penalty of stoppage of

one increment with future effect is imposed on the respondent. The petitioner is directed to give all benefits to the respondent from the date of the publication of the award till he was reinstated in service within a period of three months from the receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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